

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL SNELL AND WOODROW SNELL : CIVIL ACTION
Plaintiffs :
V. :
ROBERT J. DUFFY ET AL :
Defendants : NO. 02-3660

ORDER

AND NOW, this day of , 2003, upon consideration of Defendant's Motion in Limine and Plaintiffs' Response thereto, if any, it is hereby ordered that said motion is granted. Plaintiffs are precluded from introducing into evidence the: September 19, 1996 Complaint against George and Anita Brady for failure to confine dogs; June 7, 1997 Complaint against George Brady for dogs on Snells' property (3 pages); February 7, 1999 Complaint against George and Anita Brady for dog chasing Snells' son and attacked dog when on the back porch; March 21, 2001 Complaints reported against the Brady children for threatening Woodrow Snell; July 23, 1998 Incident Report against Tyler Brady hitting Snells' van door with golf balls (4 pages); July 22, 1999 Incident Report against Tyler and Brian Brady for pointing a toy gun at Laura Snell (4 pages); Transcript of November 13, 1999 conversation between Duffy and Snells (3 pages); Criminal record for George Brady (8 pages); Crime Response Reports for Henry Buck, Laura Snell, Michael Snell,

Tyler Brady, Brian Brady, George Brady (6 pages); November 14, 1990 charges against Anita Marie Brady (2 pages); November 5, 1990 charges against George T. Brady; September 5, 1997 Non-traffic Summons for Zachary Buck - damaged Snells' Wooden fence; June 8, 1996 citation regarding June 8, 1996 incident with Joseph Snell (6 pages); March 3, 1999 Notice of Trial Summons case - George Brady for dogs running at large with notation of "found guilty" (2 pages); Records for 1997 calls to police (6 pages); Hand-written notes detailing incidents of July 20, 22, and 23, 1996 and May 10, 1997; September 10 and 14, 1996 letter from Mary Ann Snell and January 28, February 8, and February 17, 1999 SPCA Reports (6 pages); and the Video of boys showing hostility. T is furthered order Laura Snell, Joseph Snell, James Buck, George Brady, Elaine Russell, Cherish Ogden, Samantha Wallace, Joseph C. Whisler, Virginia Whisler and Joel Rosenberg are not allowed to testify at the trial.

J.

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DEFENDANTS' MOTION IN LIMINE

Defendants Robert Duffy and Jeffrey Wlock, by their counsel, Randall J. HENZES, Deputy Attorney General, hereby move this Court for an order precluding the plaintiffs from introducing into evidence certain documents and witnesses at the trial of this case. This memorandum of law is submitted in support of their motion.

Wherefore, defendants Duffy and Wlock respectfully request that their motion be granted.

D. MICHAEL FISHER
ATTORNEY GENERAL

BY:

Randall J. HENZES
Deputy Attorney General
Identification No. 53256

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**DEFENDANTS' MEMORANDUM OF LAW IN
SUPPORT OF THEIR MOTION IN LIMINE**

I. STATEMENT OF THE CASE

Plaintiffs Michael C. Snell and his son, Woodrow Snell ("Snells"), filed this federal action against the Pennsylvania State Police, Pennsylvania State Trooper Robert J. Duffy and Pennsylvania State Trooper Jeffrey Wlock. Michael Snell alleged that Duffy and Wlock arrested him on November 15, 1999 for simple assault, recklessly endangering another person and harassment without a warrant and without probable cause. He further alleged that he was subsequently prosecuted on the charges and was found not guilty by a jury. He alleges that his arrest and subsequent prosecution violated his constitutional rights. Woodrow Snell alleges that Wlock pushed against an ice bin causing him to cut his leg.

Plaintiffs identified the following documents in their Pre-Trial Memorandum: September 19, 1996 Complaint against George and Anita Brady for failure to confine dogs; June 7, 1997 Complaint against George Brady for dogs on Snells' property (3 pages);

February 7, 1999 Complaint against George and Anita Brady for dog chasing Snells' son and attacked dog when on the back porch; March 21, 2001 Complaints reported against the Brady children for threatening Woodrow Snell; July 23, 1998 Incident Report against Tyler Brady hitting Snells' van door with golf balls (4 pages); July 22, 1999 Incident Report against Tyler and Brian Brady for pointing a toy gun at Laura Snell (4 pages); Transcript of November 13, 1999 conversation between Duffy and Snells (3 pages); Criminal record for George Brady (8 pages); Crime Response Reports for Henry Buck, Laura Snell, Michael Snell, Tyler Brady, Brian Brady, George Brady (6 pages); November 14, 1990 charges against Anita Marie Brady (2 pages); November 5, 1990 charges against George T. Brady; September 5, 1997 Non-traffic Summons for Zachary Buck - damaged Snells' Wooden fence; June 8, 1996 citation regarding June 8, 1996 incident with Joseph Snell (6 pages); March 3, 1999 Notice of Trial Summons case - George Brady for dogs running at large with notation of "found guilty" (2 pages); Records for 1997 calls to police (6 pages); Hand-written notes detailing incidents of July 20, 22, and 23, 1996 and May 10, 1997; September 10 and 14, 1996 letter from Mary Ann Snell and January 28, February 8, and February 17, 1999 SPCA Reports (6 pages); and the Video of boys showing hostility. In addition to those documents, plaintiffs identified the following individuals as potential witnesses: Laura Snell, Joseph Snell,

James Buck, George Brady, Elaine Russell, Cherish Ogden, Samantha Wallace, Joseph C. Whisler, Virginia Whisler and Joel Rosenberg.

Defendants now moves this Court for an order precluding the introduction into evidence the aforementioned documents and for an order precluding the aforementioned individuals from testifying at trial. This memorandum of law is submitted in support of its motion.

I. ARGUMENT

Under Federal Rule of Evidence 401, " 'relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed.R.Evid. 401. "The standard of relevance established by [Rule 401] is not high." Carter v. Hewitt, 617 F.2d 961, 966 (3d Cir. 1980). Once the threshold of logical relevancy is satisfied, the matter is largely within the discretion of the trial court. See United States v. Steele, 685 F.2d 793, 808 (3d Cir. 1982). Federal Rule of Evidence 402 states: "All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority. Evidence which is not relevant is not admissible." Fed.R.Evid. 402.

1. Witnesses

The Snells identified Laura Snell, Joseph Snell, James Buck, George Brady, Elaine Russell, Cherish Ogden, Samantha Wallace, Joseph C. Whisler, Virginia Whisler and Joel Rosenberg as individuals whom they wish to call as witnesses in this case. They, however, have not offer any insight as to what their purported testimony will be. To the extent, each individual will testify about events other than Duffy and Wlock's interactions with the Snells on November 13, 1999 or unless they have any information regarding the contents of the citation issued by Duffy to Michael Snell, any testimony they would have to offer is not relevant to the issues in this case and inadmissible. Moreover, a review of Plaintiffs' Self Executing Disclosures under Rule 26, Exhibit "A", attached, shows that none of these individuals were identified as individuals who would likely have discoverable information that would support their claims. The failure to identify these individuals in their initial disclosures is grounds for precluding their testimony¹. See Stein v. Foamex International, Inc., 2001 WL 856722, *4 (E.D.Pa. 2001) (Pursuant to Federal Rule of Civil Procedure 37, "[a] party

¹Defendants due note that plaintiffs did file a second set of disclosures in which all these individuals were identified. However, this document was filed will beyond the discovery deadline and it appears all the information contain in the second set of disclosures was available to plaintiffs' when they filed their first set of disclosures on November 20, 2002.

that without substantial justification fails to disclose information required by Rule 26(a) or 26(e)(1), or to amend a prior response to discovery as required by Rule 26(e)(2), is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed." Fed.R.Civ.P. 37(c)(1)). Accordingly, these individuals should not be allowed to testify at the trial in this matter.

2. Documents

Plaintiff have identified the following documents that they plan on using as exhibits during the trial: September 19, 1996 Complaint against George and Anita Brady for failure to confine dogs; June 7, 1997 Complaint against George Brady for dogs on Snells' property (3 pages); February 7, 1999 Complaint against George and Anita Brady for dog chasing Snells' son and attacked dog when on the back porch; March 21, 2001 Complaints reported against the Brady children for threatening Woodrow Snell; July 23, 1998 Incident Report against Tyler Brady hitting Snells' van door with golf balls (4 pages); July 22, 1999 Incident Report against Tyler and Brian Brady for pointing a toy gun at Laura Snell (4 pages); Transcript of November 13, 1999 conversation between Duffy and Snells (3 pages); Criminal record for George Brady (8 pages); Crime Response Reports for Henry Buck, Laura Snell, Michael Snell, Tyler Brady, Brian Brady, George Brady (6 pages); November 14, 1990 charges against Anita Marie Brady (2

pages); November 5, 1990 charges against George T. Brady; September 5, 1997 Non-traffic Summons for Zachary Buck - damaged Snells' Wooden fence; June 8, 1996 citation regarding June 8, 1996 incident with Joseph Snell (6 pages); March 3, 1999 Notice of Trial Summons case - George Brady for dogs running at large with notation of "found guilty" (2 pages); Records for 1997 calls to police (6 pages); Hand-written notes detailing incidents of July 20, 22, and 23, 1996 and May 10, 1997; September 10 and 14, 1996 letter from Mary Ann Snell and January 28, February 8, and February 17, 1999 SPCA Reports (6 pages); and the Video of boys showing hostility. As with their witnesses, the documents identified by Snells in their pre-trial memorandum were never identified in their Rule 26(a) disclosures. As such they should be preclude on that basis. Moreover, even assuming that the Snells can leap this high hurdle of failure to disclose, these documents have no relevance to the issue whether Duffy lacked probable cause to issue the citation for Snell to appear at a hearing and to the issue whether Wlock pushed Snell. While the Snells may argue that these documents show that children had a motive to lie to Duffy about what happened on November 13, 1999, the undisputed fact remains that the children identified Michael Snell to Duffy as the one who pointed the gun at them three times. These documents do nothing to dispute what the children told Duffy nor do the documents shed any light on whether Wlock

pushed Woodrow Snell. Accordingly, they are not relevant and are inadmissible.

III. CONCLUSION

Based upon the foregoing reasons, defendants respectfully request that their motion be granted.

D. MICHAEL FISHER
ATTORNEY GENERAL

BY: _____
Randall J. HENZES
Deputy Attorney General
Identification No. 53256

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CERTIFICATE OF SERVICE

I, Randall J. HENZES, Deputy Attorney General, hereby
certify that a true and correct copy of Defendants' Motion in
Limine was served on May 30 2003 by first class mail postage
prepaid to:

J. Michael Considine, Esquire
12 East Barnard Street
Suite 100
West Chester, Pa 19380

D. MICHAEL FISHER
ATTORNEY GENERAL

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